

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: PROPULSID	:	MDL NO. 1355
PRODUCTS LIABILITY LITIGATION	:	SECTION "L"
.....	:	JUDGE FALLON

THIS DOCUMENT RELATES TO CIVIL ACTION NO. 01-2539

ORDER

Before the Court is the motion for suggestion of remand filed by plaintiff in the above referenced action captioned *Deather Jackson, et al. v. Johnson & Johnson Co., et al.* Plaintiffs seek remand of this case to the Circuit Court of Tennessee for the Thirteenth Judicial District at Memphis. For reasons set forth below, the motion is DENIED.

I. Background

The plaintiffs initiated a complaint against defendants Johnson & Johnson, Co., Janssen Pharmaceutica, Inc. ("Janssen"), Kenneth Harris, M.D., and Fred's, Inc. in the Circuit Court of Shelby County, Tennessee on August 15, 2000. On September 15, 2000, defendants filed a notice of removal, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332, removing the action to U.S. District Court for the Western District of Tennessee. On November 22, 2000, the U.S. District Court remanded the

action finding that non-diverse defendants Harris and Fred's were not fraudulently joined. The Court also held that the defendants had failed to prove that the amount in controversy was less than \$75,000.00.

On December 5, 2000, defendant Harris was voluntarily dismissed from the action. On February 9, 2001, defendants Fred's and Fred's Stores of Tennessee, Inc. were also dismissed from the lawsuit. On February 12, 2001, defendants Johnson & Johnson and Janssen filed an amended notice of removal, removing the action to the U.S. District Court for the Western District of Tennessee. Plaintiffs' filed a motion to remand arguing that nothing had changed since the district court's prior order remanding the case. In the meanwhile, the Judicial Panel for Multidistrict Litigation issued a Conditional Transfer Order designating the case as a tag-along action which would be transferred to the U.S. District Court for the Eastern District of Louisiana for consolidation with *In re Propulsid Products Liability Litigation* MDL-1355.

On April 2, 2001, the district court issued an order preliminarily denying plaintiffs' motion to remand. In its order the district court held that the defendants had made a prima facie showing that the amount in controversy requirement of § 1332 was satisfied. This, coupled with the fact that the non-diverse defendants were no longer party to the action led the Court to deny the motion to remand. However, the district court felt that it should defer a final ruling to this Court in the interest of efficiency and judicial economy.

II. Analysis

Title 28, United States Code, Section 1407, Rule 1.5 provides that the "pendency of a motion,

order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court." However, motions pending in the transferor court may be presented to and decided by the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2d. Cir. 1990); *In re Prudential Ins. Co. of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48(J.P.M.L. 2001). In this case, the transferor court provisionally ruled in the present motion but deferred the final decision to this Court. Having reviewed the provisional order issued by the transferee court as well as the memorandum filed by the parties in this Court, the Court agrees with the conclusions reached by the transferor court in its provisional order and adopts it as its own final ruling.

III. Conclusion

For the forgoing reasons, the Court adopts as its own the conclusions reached by the U.S. District Court for the Western District of Tennessee in its Provisional Order dated April 2, 2001. Accordingly,

IT IS ORDERED that the plaintiffs' motion to remand be and hereby is DENIED.

New Orleans, Louisiana this 28th day of June, 2002

/s/ Eldon E. Fallon
UNITED STATES DISTRICT JUDGE